

**STATE OF CALIFORNIA
DEPARTMENT OF CONSUMER AFFAIRS
BOARD FOR GEOLOGISTS AND GEOPHYSICISTS

DISCIPLINARY GUIDELINES**



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TABLE OF CONTENTS

	Page Number
INTRODUCTION	1
FACTORS TO BE CONSIDERED	2
VIOLATIONS OF THE GEOLOGIST AND GEOPHYSICIST ACT AND RECOMMENDED ACTIONS	3
VIOLATIONS OF ADDITIONAL BUSINESS AND PROFESSIONS CODE OR BGG REGULATIONS AND RECOMMENDED ACTIONS	7
STANDARD PROBATION CONDITIONS	9
INDEX OF VIOLATIONS	14

INTRODUCTION

To facilitate uniformity of penalties and to ensure that its disciplinary policies are known, the Board for Geologists and Geophysicists (Board) establishes these disciplinary guidelines. While recognizing the concept that administrative law judges must be free to exercise their discretion in such cases, the Board desires that these guidelines be followed to the extent possible and that any departures therefrom be noted and explained in the proposed decision.

The Board desires that, extenuating, mitigating and aggravating circumstances, be fully considered and noted in the proposed decision. Of primary importance is the effect the registrant's conduct had or can have on the public as consumers and on ~~its~~ public health, safety and welfare.

Conduct of disciplinary proceedings shall be completed in accordance with the Administrative Procedure Act.¹ All adjudicative hearings and proceedings² shall be conducted by an administrative law judge as designated in Section 11371 of the Administrative Procedure Act (APA) and shall be conducted under the terms and conditions set forth in the APA. The Administrative Procedures Manual (APM), which details procedures in accordance with the APA, can be found at the Office of Administrative Hearings website at: www.oah.dgs.ca.gov/Laws/default.htm.

¹ Chapter 3.5 (commencing with Section 11340), Chapter 4 (commencing with Section 11370), Chapter 4.5 (commencing with Section 11400), and Chapter 5 (commencing with Section 11500) 11371 of Part 1, Division 3, Title 2 of the Government Code constitute the Administrative Procedure Act.

² "adjudicative proceeding" means an evidentiary hearing for determination of facts pursuant to which the Board formulates and issues a decision.

FACTORS TO BE CONSIDERED

In determining whether revocation, suspension or probation is to be imposed in a given case, factors such as the following should be considered:

- (1) Nature and severity of the act(s), offenses or crimes(s) under consideration;
- (2) Actual or potential harm to the public;
- (3) Actual or potential harm to any client;
- (4) Prior disciplinary record;
- (5) Prior warnings on record or prior rehabilitation efforts;
- (6) Number and/or variety of current violations;
- (7) Evidence of mitigating circumstances;
- (8) Evidence of rehabilitation completed;
- (9) In case of a criminal conviction, compliance with terms of sentence and/or court-ordered probation;
- (10) Overall criminal record;
- (11) Time passed since the act(s) or offense(s) occurred; and
- (12) If applicable, evidence of expungment proceedings pursuant to section 1203.4 of the Penal Code.

VIOLATIONS OF THE GEOLOGIST AND GEOPHYSICIST ACT AND RECOMMENDED ACTIONS

The following minimum and maximum sentences shall apply to the appropriate violation of the code. See pages 9 through 13 for Standard Probation Conditions, Optional and Mandatory.

- (1) **Section 7860(a): Conviction of a crime substantially related to the qualifications, functions, and duties of a geologist or geophysicist, in which case the certified record of conviction shall be conclusive evidence thereof.**

Maximum: Revocation and Mandatory Condition No. 1.

Minimum: Revocation stayed with three-years probation as follows:

- a. 60 days actual suspension.
- b. Mandatory Conditions Nos. 1 through 9.

- (2) **Section 7860(b): Commission of any deceit or misrepresentation in his or her practice.**

Maximum: Revocation and Mandatory Condition No. 1.

Minimum: Revocation stayed with three-years probation as follows:

- a. 45 days actual suspension.
- b. Mandatory Conditions Nos. 1 through 9.

- (3) **Section 7860(b): Violation of contract (initial offense).**

Maximum: Revocation and Mandatory Condition No. 1.

Minimum: Revocation stayed with two-years probation as follows:

- a. 30 days actual suspension.
- b. Mandatory Conditions Nos. 1 through 9.
- c. Optional Condition No. 3.

(4) Section 7860(b): Violation of Contract (multiple or repeat violations).

Maximum: Revocation and Mandatory Condition No. 1.

Minimum: Revocation stayed with two-years probation as follows:

- a. 60 days actual suspension.
- b. Mandatory Conditions Nos. 1 through 9.
- c. Optional Condition No. 3.

(5) Section 7860(b): Fraud (initial offense).

Maximum: Revocation and Mandatory Condition No. 1.

Minimum: Revocation stayed with three-years probation as follows:

- a. 90 days actual suspension.
- b. Mandatory Conditions Nos. 1 through 9.

(6) Section 7860(b): Fraud (multiple or repeat violations)

Maximum: Revocation and Mandatory Condition No. 1.

Minimum: Revocation stayed with three-years probation as follows:

- a. 180 days actual suspension.
- b. Mandatory Conditions Nos. 1 through 9.

(7) Section 7860(b): Negligence (initial offense).

Maximum: Revocation and Mandatory Condition No. 1.

Minimum: Revocation stayed with two-years probation as follows:

- a. 45 days actual suspension.
- b. Mandatory Conditions Nos. 1 through 9.

c. Optional Condition No. 1.

(8) Section 7860(b): Negligence (multiple or repeat violations).

Maximum: Revocation and Mandatory Condition No. 1.

Minimum: Revocation stayed with two-years probation as follows:

- a. 90 days actual suspension.
- b. Mandatory Conditions Nos. 1 through 9.
- c. Optional Condition No. 1.

(9) Section 7860(b): Incompetence.

Maximum: Revocation and Mandatory Condition No. 1.

Minimum: Revocation stayed with five-years probation as follows:

- a. 120 days actual suspension.
- b. Mandatory Conditions Nos. 1 through 9.
- c. Optional Conditions Nos. 1, 2 and 4.

(10) Section 7860(c): Found guilty of fraud or deceit in obtaining his or her certificate.

Maximum: Revocation of certificate obtained and Mandatory Condition No. 1.

Minimum: Revocation of certificate obtained and Optional Condition No. 1.

(11) Section 7860(d): Aiding or Abetting any person in the violation of any provisions of this chapter.

Maximum: Revocation and Mandatory Condition No. 1.

Minimum: Revocation stayed with two-years probation as follows:

- a. 60 days actual suspension.
- b. Mandatory Conditions Nos. 1 through 9.

(12) Section 7860(e): Violation of any provision of this chapter (not included above).

Maximum: Revocation and Mandatory Condition No. 1.

Minimum: Revocation stayed with two-years probation as follows:

- a. 30 days actual suspension.
- b. Mandatory Conditions Nos. 1 through 9.-

**VIOLATIONS OF ADDITIONAL BUSINESS AND PROFESSIONS CODE
OR BGG REGULATIONS AND RECOMMENDED ACTIONS**

- 119(a)** Displays or causes or permits to be displayed or has in his/her possession any canceled, revoked, suspended, fictitious, or fraudulently altered license, or any document simulating a license or purporting to be or to have been issued as a license.
- 119(b)** Lends his/her license to any person or knowingly permits the use thereof by another.
- 119(c)** Displays or represents any license not issued to him/her as being his/her license.
- 119(d)** Fails or refuses to surrender to the issuing authority upon its lawful demand any license which has been suspended, revoked or canceled.
- 119(e)** Permits any unlawful use of a license issued to him/her.
- 119(f)** Photographs, photocopies, duplicates, or in any way reproduces any license or facsimile thereof in such a manner that it could be mistaken for a valid license, or displays or has in his/her possession any such photograph, photocopy, duplicate, reproduction, or facsimile unless authorized by the provisions of this code.

Maximum: Revocation

Minimum: Revocation stayed with 3 years probation.

Minimum conditions of probation: Mandatory Conditions Nos. 5 through 9 and optional conditions Nos. 1 through 4, as appropriate. -

- 125** Any person, licensed under the provisions of Division 1, 2, or 3 of this code is guilty of a misdemeanor and subject to the disciplinary provisions of this code applicable to him/her, who conspires with a person not so licensed to violate any portion of this code or who, with intent to aid or assist such person in violating such provision:

- a. Allows his/her license to be used by such person.
- b. Acts as his/her agent or partner.

Maximum: Revocation

Minimum: Revocation stayed with 3 years probation.

Minimum conditions of probation: Mandatory Conditions Nos. 5 through 9 and optional conditions Nos. 1 through 4, as appropriate. -

125.6 Refusal to perform licensed activity; aiding or inciting refusal of performance by another licensee; discrimination or restriction in performance based on: race, color, sex, religion, ancestry, physical handicap, marital status or national origin.

Maximum: Revocation

Minimum: Revocation stayed with three years probation.

Minimum conditions of probation: Mandatory Conditions Nos. 5 through 9 and optional conditions Nos. 1 through 4, as appropriate.

496(a) Conduct which violates the security of the examination materials.

Maximum: Revocation or if respondent is unlicensed, denial of licensure for 5 years.

Minimum: Suspension for 180 days or if respondent is unlicensed, denial of licensure for 5 years.

820 Unable to practice his or her profession safely because the licentiate's ability to practice is impaired due to mental illness, or physical illness affecting competency.

Maximum: Revocation.

Minimum: Suspension until respondent's mental or physical illness affecting competency is successfully treated and such successful treatment is certified by a physician licensed in California.

STANDARD PROBATION CONDITIONS

MANDATORY CONDITIONS

(To be Included in ALL Probation Decisions/Orders)

Whenever the administrative law judge or the Board orders probation, the decision shall contain the following or similar language:

(1) PUBLIC REPROVAL

Respondent shall be publicly reproved.

(2) OBEY ALL LAWS

Respondent shall obey all federal, state and local laws, and all rules and regulations of the Board for Geologists and Geophysicists governing the practice of geology and geophysics in California. A full and detailed account of any and all violations of law shall be reported by the respondent to the Board in writing within seventy-two (72) hours of occurrence.

Rationale

All licensees are responsible for "abiding by the law" as it relates to their licensure and the practice of geology/geophysics. This condition emphasizes the probationer's responsibility and it provides the Board with a vehicle to take more immediate and severe action if another violation occurs.

(3) COMPLY WITH PROBATION PROGRAM

Respondent shall fully comply with the terms and conditions of the Probation Program established by the Board and cooperate with representatives of the Board in its monitoring and investigation of the respondent's compliance with the Program.

Rationale:

Full compliance with terms and conditions of probation demonstrates the probationer's commitment to rehabilitation and to correcting the problems which led to the disciplinary action.

(4) REPORT IN PERSON

Rationale:

Respondent, during the period of probation, shall appear in person, upon 15-days written notice, at interviews/meetings as directed by the Board or its designated representatives.

This provides a means for the Board representatives to make periodic personal assessments of the probationer, to give guidance and direction and to require the probationer to appear before the Board, if necessary.

(5) ABSENCE FROM STATE

Periods of residency or practice outside of California will not apply to the duration of this probationary term. The respondent must provide written notice to the Board within 10 days of any practice related to geology or geophysics outside the State of California or any change of residency.

Rationale:

This ensures probationers are obtaining necessary treatment and consumers are protected regardless of the state of residency. Probationers cannot move out of state to avoid probation.

(6) SUBMIT WRITTEN REPORTS

Respondent, during the period of probation, shall submit such declarations and verification of actions under penalty of perjury and copies of all written professional reports as are required by the Board. Declarations shall contain statements relative to respondent's compliance with all the terms and conditions of the Board's Probation Program. Respondent shall immediately execute all release of information forms as may be required by the Board or its representatives.

Rationale:

This provides the Board with a mechanism for maintaining communication with the probationer between meetings; gathering pertinent information from the probationer; and obtaining written materials, other than routine reports, that might be deemed necessary on an individual basis.

(7) NOTIFY CLIENTS/EMPLOYERS

Within 30 days of the effective date of the decision, respondent shall provide the Board with evidence that he or she has notified all clients and employers with whom he or she has a current or continuing contractual or

employment relationship of the violation, findings and discipline imposed and the name, telephone number and business address of each person required to be so notified.

Rationale:

It is in the public interest that each disciplined registrant notify his or her client(s) or employer(s) of the findings and discipline imposed by the Board. If an issue of competency resulted in disciplinary action, the immediate clients and employers of the licensee should know of the Board's action.

(8) INVESTIGATIVE COSTS

Within 90 days of the effective date of the decision, respondent shall reimburse the Board for its investigative and enforcement costs. The period of probation shall be extended until full payment is made. If reimbursement is ordered pursuant to Business and Professions Code section 125.3, the Board shall not renew the license if the respondent fails to pay all of the costs as ordered, except as provided in Business and Professions Code section 125.3(g)(2).

Rationale:

This provides the Board with a mechanism to recoup some of the costs attendant with enforcing the Geologist and Geophysicist Act. This term of probation will require those who violate the laws and regulations to pay some of the Board's costs in taking appropriate disciplinary action.

(9) VIOLATION OF PROBATION

If respondent violates probation in any respect, the Board, after giving respondent notice and the opportunity to be heard, may revoke his or her probation and reinstate the disciplinary order that was stayed. If an accusation or petition to revoke probation is filed against respondent, or if the matter is submitted to the Office of the Attorney General for the filing of such during probation, the Board shall have continuing jurisdiction until all matters are final and the period of probation shall be extended until all matters are final.

Rationale:

This provides the Board with a means to enforce the terms and conditions of probation and provides continuing jurisdiction for invoking the initial disciplinary order or taking other disciplinary action.

OPTIONAL CONDITIONS

Whenever the administrative law judge or Board orders probation, the decision shall contain the following or similar language, appropriate to the ordered discipline.

**(1) COMPLETE
GEOLOGY/GEOPHYSICS
COURSE(S)**

Respondent at his/her expense, shall successfully complete a course or courses related to the practice of geology/geophysics or the ethical practice thereof as directed by the Board prior to engaging in the practice of geology/geophysics and prior to the end of the probationary term.

The respondent is suspended from practicing geology or geophysics until the necessary course work is completed. The content of such course or courses and the place and conditions of instruction shall be specified by the Board or its representatives at the time of the initial probation meeting based on the nature of the violation(s). All courses shall be approved prior to enrollment. The respondent shall submit written proof of enrollment and proof of successful completion. Transcripts or certificates of completion shall be mailed directly to the Board by the agency or entity instructing the respondent.

Rationale:

This condition permits the Board to require the probationer to remediate deficiencies in knowledge which affected or may affect his/her practice. This is necessary in gross negligence or incompetence. An actual suspension of a license may be required as determined by the Board, until the required course work is completed.

(2) EXAMINATION

Respondent shall apply for, pay the appropriate application fee and pass the Board's geologist or geophysicist licensing examination, whichever is appropriate, prior to engaging in the practice of geology and/or geophysics.

(3) RESTITUTION

Probationer shall make restitution to any person damaged as a result of the probationer's breach of a contract to which that person is a party. Such restitution shall be made prior to the end of the actual period of suspension unless it is impossible because of the large amount of restitution. In such cases, payments may be made with payment in full up to six months prior to the end of probation.

Rationale:

In many cases where a consumer has been directly injured, it is in the interest of equity and judicial efficiency that the probationer be ordered to pay restitution. This is particularly true in situations where a consumer is not likely to seek remedy in a civil court.

(4) DIRECT SUPERVISION

During license suspension, respondent shall practice only under the direct supervision of a licensed geologist or geophysicist.

Rationale:

Under certain circumstances, it is in the interest of public safety that a disciplined registrant practice only under the direct supervision of another registrant approved by the Board. This may be true where issues of competency have arisen and the registrant has been directed to take remedial steps in re-establishing professional competency.

INDEX OF VIOLATIONS

<u>B & P SECTION</u>	<u>Page Number</u>
7860(a) Conviction of a Crime	3
7860 (b) Deceit or Misrepresentation	3
7860 (b) Violation of Contract (Initial)	3
7860 (b) Violation of Contract (Multiple)	4
7860 (b) Fraud (Initial)	4
7860 (b) Fraud (Multiple)	4
7860(b) Negligence (Initial)	4
7860 (b) Negligence (Multiple)	5
7860 (b) Incompetency	5
7860 (c) Fraud or Deceit in Obtaining Certification.	5
7860 (d) Assisting in the Violation of the Geologist and Geophysicist Act	5
7869 (e) Violate any Provision of Act	6
119 (a) Display Non-Current Permit	7
119 (b) Lend License to Another	7
119 (c) Display License not Issued to Self	7
119 (d) Failure to Surrender License	7
119 (e) Unlawful Use of License	7
119 (f) Unlawfully Duplicate License	7
125 Conspire with a Person Not Licensed to Use License Unlawfully	7

B & P SECTION**Page Number**

125.6	Refusal to Perform Licensed Activity	8
496 (a)	Conduct Which Violates Security of Exam Materials	8
820	Inability to Practice Due to Mental/Physical Impairment	8